

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

SERVED February 13, 1996

Issued by the Department of Transportation
on the 9th day of February, 1996

Hong Kong Fifth-Freedom All-Cargo Proceeding

Docket OST-95-764

INSTITUTING ORDER

Summary

By this order we institute a show-cause proceeding to allocate eight available weekly frequencies to utilize Fifth-Freedom traffic rights for all-cargo services, pursuant to the 1995 United States–Hong Kong Memorandum of Understanding.

Background

By Notice dated October 24, 1995, we solicited applications from U.S. carriers interested in operating all-cargo services to/from Hong Kong with local traffic (fifth-freedom) rights. These applications were solicited to take advantage of opportunities now available to U.S. carriers under a September 29, 1995, Memorandum of Understanding (MOU) between the United States and Hong Kong. Carriers already holding certificate or exemption authority were required only to apply for the necessary frequencies; carriers lacking such authority were requested to apply for exemption authority, to include a request for needed frequencies.

The MOU provides that a total of eight weekly frequencies may be operated by U.S. carriers between Hong Kong and a total of two points to be chosen in the Philippines, Thailand, and/or Korea.¹ No more than five of the available frequencies may be operated to any one of these points. In addition, one of the eight frequencies may be converted into two weekly flights to be operated by aircraft with

¹ The MOU provides that Hong Kong service may be provided from Alaska, Guam/ Commonwealth of the Northern Marianas, Hawaii and eight other points to be selected. There is no limit on the number of carriers that may serve from these gateways. As noted in our October Notice, we intend to select as gateways points where U.S. carriers are currently providing service. Others will be selected as numbers permit.

a capacity of fewer than 50 tonnes (55.1 U.S. tons) if operated in conjunction with a U.S.-Hong Kong service that does not serve the continental United States.

Applications

Pursuant to the Notice, applications for frequency allocations were received from Federal Express Corporation ("FedEx"), Northwest Airlines, Inc. ("Northwest"), Polar Air Cargo, Inc. ("Polar"), United Parcel Service Co. ("UPS") and World Airways, Inc. ("World"). Frequency allocation and exemption applications were also filed by Air Micronesia, Inc. ("Air Micronesia") and Evergreen International Airlines, Inc. ("Evergreen"). All seven applicants filed answers; replies were filed by all but Northwest.

With regard to procedural matters, UPS requested that the due date for Answers be extended for 3 weeks, until December 5, 1995, and that the due date for Replies be two weeks after that, December 19, 1995.² None of the other carriers opposed UPS's request.³ Northwest requested that the carrier-selection proceedings be held under non-hearing show-cause procedures as provided for by Rule 1750 of our procedural regulations, 14 CFR 302.1750(a)(4).⁴ FedEx requested that such proceedings be held pursuant to full-scale oral evidentiary hearing procedures before an Administrative Law Judge, but FedEx offered no justification for such procedures, other than the total number of frequencies the applicants seek.⁵ Air Micronesia opposed FedEx's motion for full-scale oral hearing procedures and requested that the Department make its decision based on the record developed pursuant to the procedures set forth in the Department's October 24 notice.⁶ FedEx responded by stating that it would not object to non-hearing procedures if FedEx were granted an allocation of at least five frequencies.⁷

Proceeding

Since U.S. carriers have requested allocations of more frequencies than are available, we have decided to institute the *Hong Kong Fifth-Freedom All-Cargo Proceeding*, Docket OST-95-764, to allocate the available frequencies among the interested U.S. carriers. It is our policy to tailor our procedures to the scope and complexity of the issues before us. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and find that written show-cause procedures under Rule 22a(d), 14 C.F.R. § 302.22a(d), are appropriate. By using these procedures we

² Letter of November 9, 1995 from UPS to Myrna Adams, DOT Dockets Section.

³ Air Micronesia conditioned its non-objection on the condition that the Department reach its decision based on the applications, answers and replies before it as of December 19. Letter of November 13, 1995 from Air Micronesia to Myrna Adams, Chief of DOT Dockets Section.

⁴ Frequency Allocation Application of Northwest Airlines, Inc., at 3.

⁵ Application of Federal Express Corporation, at 7-8.

⁶ Answer of Air Micronesia, Inc., at 7.

⁷ Answer of Federal Express Corporation, at 1-2.

can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary cost to the applicants. We therefore grant Northwest's request to use show-cause procedures, and we deny FedEx's request for full-scale oral evidentiary hearings.

As we have already invited applications for the new Hong Kong-and-beyond frequencies by Notice dated October 24, we will not provide a further opportunity for carriers to file applications for the frequencies at issue. As described more fully below, we will put the proceeding on an expedited schedule.⁸

Evidence Requested

As noted in the Notice dated October 24, 1995, evidence requested thus far has been limited to that required by Part 302, Subpart D of our procedural regulations. To develop a comparative basis for selecting among the carriers in this proceeding, we will require submission of certain additional information, as detailed in Appendix A. Submissions should contain specific factual information so that further clarification is not necessary. The sources and methodology used for all traffic estimates should be clearly explained.

Criteria

In allocating the available frequencies, our principal objective will be to maximize the public benefits that will result from award of this authority. In this regard, we will consider which applicant(s) will be most likely to offer and maintain the best service for the shipping public. We will also consider the effects of the applicants' service proposals on the competitive environment, including the overall market structure and level of competition in the U.S.-Far East market and in any other market shown to be relevant, and also including, where relevant, the positive effect on applicants' operations in the Far East. In addition, we will consider other factors historically used for carrier selection where they are relevant.

We will not place in issue the selection of backup carriers for these frequencies. We caution carriers, however, that frequencies may not be held indefinitely if not used.⁹ We therefore intend that, if the flights allocated are not being used, the frequency

⁸ The October 24 notice also requested that incumbent carriers notify the Department of what gateways they were currently serving so that we could determine what gateways needed to be selected under the 1995 MOU. Not all carriers have submitted this information. Therefore, we will require that by the Direct Exhibit due dates set forth in this notice, that all incumbent carriers provide information in the docket describing their level of operations in the U.S.-Hong Kong market and the gateways served.

⁹ See, e.g., U.S.-Russia All-Cargo Frequency Allocation Case, Order 95-11-9, served November 13, 1995, at 7.

allocations will expire automatically in 90 days and the frequencies will revert to the Department for reallocation.¹⁰

Procedural Schedule

In view of our desire for a timely decision in this case, we intend to conduct the proceeding instituted here according to the following schedule:¹¹

Direct Exhibits due: February 21, 1996
 Rebuttal Exhibits due: March 6, 1996
 Briefs to DOT Decisionmaker due: March 20, 1996

All dates indicated are delivery dates. An original and four copies of all submissions are to be received at the Department Docket Facility no later than the dates indicated.¹² Given the deadlines involved, service may be made by fax.

ACCORDINGLY,

1. We grant the request of Northwest Airlines, Inc. to the extent consistent with this order, and institute the *Hong Kong Fifth-Freedom All-Cargo Proceeding*, which will be decided by non-oral hearing procedures under Rule 22a(d) of our regulations (14 CFR 302.22a(d));
2. The proceeding instituted in ordering paragraph 1 shall consider which primary carrier(s) should be granted the available Hong Kong fifth-freedom cargo frequencies and (as necessary) underlying exemption authority, and what terms, conditions, and limitations, if any, should be placed on any authority awarded in this proceeding;

¹⁰ In its Answer, Northwest stated that it is prepared to withdraw its request for frequencies if we impose strict dormancy requirements. As we are proposing to do so, we will treat this as a motion to withdraw the application and grant it.

¹¹ The original filing should be on 8 1/2" X 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system.

¹² A computer diskette copy of all exhibits and briefs prepared using electronic spreadsheet or word processing programs should also be filed with the Economic and Financial Analysis Division of the Office of Aviation Analysis, Room 6401, 400 Seventh Street, S.W.; Washington, D.C. 20590. Diskettes should be DOS-formatted. Exhibits and briefs prepared with Microsoft Excel (version 5.x or earlier), Lotus 1-2-3 (version 3.x or earlier), Microsoft Word (version 6.x or earlier), or Wordperfect (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits and briefs via email to our Internet address: dot_dockets@postmaster.dot.gov. Parties using other software may either (1) file exhibits and briefs in the foregoing formats, or (2) contact the Economic and Financial Analysis Division at (202) 366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy, however, will be the official record.

3. By the Direct Exhibit due date set forth in this order, all incumbent carriers shall provide information in the docket describing their level of operations in the U.S.-Hong Kong market and the gateways served;
4. We dismiss as moot the motion of United Parcel Services Co. to extend the answer and reply deadlines;
5. We grant the motion of Northwest to withdraw its application; and
6. We deny Federal Express Corporation's motion for an oral evidentiary hearing.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available
on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

Appendix A

Submission of the following information, should be for the forecast year January 1, 1996 to December 31, 1996:¹³

- Proposed schedules showing startup dates, complete routings (including all intermediate points) from origin to destination of all flights that would operate in the beyond-Hong Kong markets, days scheduled, equipment types, available capacity for the through routing, and variation of frequencies/routings by traffic season, if applicable.
- A cargo traffic forecast for each beyond-Hong Kong market proposed to be served based on the proposed schedules. Such forecast should also specify the amount of traffic originating in or destined for the United States that will also be transported on the proposed flights permitting the Department to determine the amount of U.S.-Hong Kong, U.S.-beyond Hong Kong, and Hong Kong-beyond traffic on all proposed flights. The traffic forecast must clearly provide the source and basis for the traffic projections.
- Proposed general commodity, express/small package, container and bulk specific commodity rates, by weight break, which the carrier will offer in the proposed markets.
- A *pro forma* profit and loss statement for the forecast year. The source and methodology of all cost estimates must be clearly specified.
- A statement as to whether the aircraft to be used in these services is currently available or whether the applicant will need to acquire or lease aircraft to conduct its proposed operations. If the aircraft are not currently available, the applicant should state how it will obtain the aircraft necessary and the date on which the aircraft will be available.
- A complete description and an estimate of projected startup costs for the proposed service.
- A statement as to whether the applicant, if not chosen for the primary award, would accept an award of backup authority in this proceeding.

¹³ All financial data and responsive information must be given in U.S. dollars and all weights must be in U.S. pounds.

--A statement as to whether the applicant, if selected for the primary award, would accept a condition on the authority requiring service by a date specified by the Department, and if so, what startup period should be imposed.

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